

I. REJECTION UNDER 35 U.S.C. § 112

The rejection under 35 U.S.C. § 112, second paragraph (paragraph 1 of the Office Action) is believed to be moot in view of the cancellation of Claims 17, 19, 22 and 24.

II. PRIOR ART REJECTIONS

The rejections of paragraphs 3-5 are believed to be moot in view of the cancellation of Claims 28 and 30-32. Concerning the remaining rejections:

[Paragraph 6] Claims 1, 2 and 14-16 were again rejected under 35 U.S.C. § 102 as being anticipated by the U.S. patent to Fukuoka. However, Claim 1 recites that the intermediate layer extends over the entire surface of the ground contact layer, which is not true for the layer 25 of Fukuoka.

Applicants also note that Claim 1 recites that the upper layer is a comfort layer “having elastic shock absorbing properties.” In response to Applicants’ prior argument that projections 29, 31 and 33 of the ground contact layer in Fukuoka are provided with hard cores 30, 32 and 34 (col. 3, lines 39-40; col. 5, lines 15-16), to provide stimulation, the Examiner has alleged that “the hard cores could not negate all of the cushioning of the ... upper cushion layer.” However, this allegation is without support in the reference and, indeed, contradicts the description therein of the cores providing stimulation (col. 1, lines 5-9). Thus the projections 29, 33 and 31 cannot provide the claimed cushion layer.

Additionally, Applicants note that Claim 1 recites that the upper comfort layer is “assembled on said upper of said shoe.” Since the upper is not shown or described in

Fukuoka, this feature is not disclosed therein. Accordingly, Fukuoka does not anticipate any of the claims.

[Paragraph 7] Claims 1, 20 and 25 were also rejected under 35 U.S.C. § 102 as being anticipated by the U.S. patent to Salzman. The Examiner there alleges that the insert 30 of Salzman comprises an intermediate layer which covers the entire ground contacting surface. However, there is no description of the extent of the insert 30 in the specification of Salzman, other than that it provides an arch portion intermediate front and rear portions (column 3, lines 3-6). There is, in particular, no description in the specification that the insert 30 extends over the entire surface of the ground contact layer. Nor is this taught by the figures. The sectional view of Figure 2 is limited to a single plane; it provides no teaching regarding the extent of the insert 30 on either lateral side of the plane of the figure. Moreover, neither of Figures 3 and 6 of the reference shows the insert 30. Thus, the insert 30 could be significantly limited and is not taught to extend over the entire surface of the ground contact layer.

Claim 1 further recites that the ground contact layer may be made of rubber. Salzman, on the other hand, is a molded ski boot having a molded plastic ground contact layer which is explicitly described as having better torsional rigidity than rubber (col. 1, line 40), i.e., it teaches against the use of rubber. The claims thus define over this reference.

[Paragraph 9] Claims 1 and 18 were rejected under 35 U.S.C. § 103 as being obvious over Misevich in view of Giese. Initially, it is noted that the plate 37 of Misevich is

buried in the mid-sole 44-46, and so is not in contact with the ground contacting layer.

Moreover, the plate 37 of Misevich et al has a limited extent and does not extend over the entire surface of the ground contact layer. The same is true in Giese. The main bar 31 of Giese extends only over the central portion of the heel, and not to the rear or lateral sides.

The flex bars 31A of Giese are completely separate from the main bar 31 and are themselves limited to the center portion of the sole. Indeed the main bar 31 and flex bars 31A of Giese extend over only about one half of the sole area and cannot teach an intermediate layer extending over an entire surface of the ground contact layer in Misevich et al.

[Paragraph 10] Claims 1, 2, 4-14, 21, 23 and 25-27 were rejected under 35 U.S.C. § 103 as being obvious over Misevich in view of the U.S. patent to Kurrash, wherein the Examiner has relied upon Kurrash to suggest extending the stiffening layer to cover the entire surface of the ground contact layer. However, this is respectfully traversed. Element 36 of Kurrash et al is merely a mid-sole. While it is described as being made from a “relatively” hard elastomeric material, the description in Kurrash et al of stitching 46 (a rigid material is not susceptible to stitching) and the need for a separate cross bar stabilizer 48 (column 3, lines 6-10) suggests that the element 36 lacks torsional and flexional rigidity. The mid-sole 36 of Kurrash et al thus cannot suggest an intermediate layer in Misevich which has a controlled torsional and flexional rigidity.

[Paragraph 11] Claims 1, 2, 4-14, 21, 23 and 25-27 were rejected under 35 U.S.C. § 103 as being obvious over Misevich in view of the U.S. patent to Hannibal, wherein the

Examiner has relied upon Hannibal to suggest extending the stiffening layer to cover the entire surface of the ground contact layer. However, this is also respectfully traversed. The element 30 of Hannibal is simply an inner sole, and not a reinforcement. Also, it is separated from the comfort layer and is not arranged directly between the comfort layer and the ground contact layer. As for the Examiner's assertion in paragraph 14 of the Office Action that the exact placement of the layer 30 in Hannibal is not taught to be exclusive to the location disclosed, Hannibal nonetheless fails to suggest a reinforcement arranged directly between the comfort layer and the ground contact layer. Thus, no combination of the above references would anticipate or render obvious the subject matter of any of the claims.

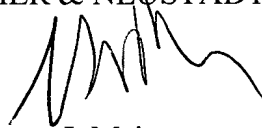
[Paragraph 12] Claim 3 was rejected under 35 U.S.C. § 103 as being obvious over any of the previously applied references, and further in view of Banich, which was cited to teach providing a mid-sole having zones of different material properties. However, whatever teaching Banich may have in this respect, it would not overcome the shortcomings of the primary references as discussed above, and so no combination of the above references would have rendered obvious the subject matter of any of the claims.

Serial No.: 09/994,059
Reply to Office Action dated September 27, 2004

Applicants therefore believe that the present application is in a condition for allowance and respectfully solicit an early notice of allowability.

Respectfully submitted,

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IN THE CLAIMS

Please amend the claims as follows:

Claims 17, 19, 22, 24, 28 and 30-32 (Cancelled).